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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Part 1 of the
Commission's Rules -- Competitive
Bidding Proceeding

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WT Docket No. 97-82

To: Chief, Wireless Telecommunications Bureau

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

Robert S. Foosaner
Vice President and
Chief Regulatory Officer

Lawrence R. Krevor
Director - Government Affairs

Laura L. Holloway
General Attorney

Nextel Communications, Inc.
1450 G Street, NW
Suite 425
Washington, D.C. 20005
202-296-8111

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SUMMARY

Nextel Communications, Inc. ("Nextel") respectfully submits these Reply Comments opposing any debt relief for C Block Personal Communications Services ("PCS") licensees.

One of the Commission's fundamental responsibilities is to promote competition, not protect competitors. This proceeding offers the Commission an unprecedented opportunity to demonstrate whether it truly believes in competition. Will the Commission embrace the marketplace and allow it -- rather than federal bureaucracies -- to determine winners and losers? Or will the Commission be intimidated by the possibility of bankruptcy -- a normal and sometimes unavoidable occurrence in the Nation's free market economy -- and interfere with the mechanics of the marketplace? The Commission should stay the course and affirm Chairman Hundt's previous response to whether C Block licensees could expect any relief from economically irresponsible bid payment obligations: "Forget about it."

The inescapable reality is that certain C Block entities, masquerading as "small businesses," are nothing more than fronts for multi-national foreign-owned conglomerates seeking corporate welfare from the American taxpayer. If the Commission grants this relief, implicitly approving their tactics, the biggest winners will be Korea Electric Power Corp., British Telecom, Sony, Lucky Goldstar, Pohang Steel, Hyundai and other large foreign companies seeking cheap and easy entry into the U.S. telecommunications

marketplace. The losers will be the American taxpayer who will be forced to subsidize this foreign "investment," the American consumer, and legitimate U.S. operators that followed the Commission's rules.

This proceeding is not about the small, entrepreneurial businessman attempting to establish a niche in the U.S. marketplace. It is about foreign corporate giants and a few cosmetic designated entities which, after abusing Congress' limited intent to facilitate small business PCS participation, are now attempting to shift responsibility for their own poor business decisions to the federal taxpayer. That they decided a C Block license for half the pops of an A or B PCS license was worth two times as much is not the responsibility of the Commission or Congress. The responsibility is solely that of these licensees.

The Commission has no legal or public interest basis for changing its rules after the PCS auctions ended. To do so would make it impossible for either future auction participants or the financial markets to have any confidence in the certainty, integrity and reliability of future Commission licensing proceedings employing competitive bidding. Losing or withdrawing C Block participants, or potential bidders who decided not to participate, would have had significantly different options and could have made different decisions had they known that the Commission would extend the C Block license bid payment period to twice the license term, eliminate the interest requirement, *reduce the payment obligations by up to 70%*, dictate that the A and B

Block values are the "fair market value" of C Block licenses, subordinate the government's debt to private financiers, or eliminate limits on participation by large businesses and foreign investors. Moreover, the unprecedented audacity of these proposals is compounded by the debt relief proponents' failure to commit to bring service to the public more rapidly, to commit to pay the reduced debt obligations or to maintain small business participation.

Although the proponents of debt relief assert that it would speed the availability of competing new services, the opposite will occur. Granting debt relief to irresponsible and undeserving C Block licensees will assure lengthy delays in the rollout of PCS competition as a result of extended court challenges and paralyzing uncertainty for both investors and licensees. Although some of the potential defaulting C Block licensees threaten legal action if their proposals are denied, it is self-evident that a Commission decision to enforce its rules is significantly more defensible than a Commission decision to arbitrarily apply them only to those licensees who choose to follow them.

In conclusion, the federal government should not offer "corporate welfare" of up to eight billion dollars for the C Block corporate giants in disguise. It is not the Commission's responsibility to rescue them from their self-made folly. The Commission's duty is to enforce its rules and reacquire any licenses for which the winning bidder cannot make timely installment debt payments.

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REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to the Public Notice of the Federal Communications Commission ("Commission") in the above-referenced docket,^{1/} Nextel Communications, Inc. ("Nextel") respectfully submits these Reply Comments on the potential suspension and/or forgiveness of auction debt for Personal Communications Services ("PCS") C and F Block licenses obtained at recent auctions.

Nextel and 59 other parties filed Comments herein on June 23, 1997. They contain a wide variety of opinions not only on what the Commission should do for C Block licensees currently in financial straits but, more fundamentally, on whether the Commission has the legal authority to "rescue" these Commercial Mobile Radio Service ("CMRS") licensees and whether such action serves the public interest.

Some commenters, typically C Block licensees, would forgive (i.e., eliminate) a substantial portion of the debt owed the

^{1/} Public Notice, "Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues," DA 97-679, released June 2, 1997.

Federal Treasury,^{2/} would extend the repayment period and/or reduce or eliminate the interest owed,^{3/} would have the Commission concoct for them an exit strategy by permitting sell-outs to big business,^{4/} and would even eliminate the very designated entity requirements that are supposed to distinguish these "small business" bidders from the A, B, D and E Block licensees.^{5/}

On the other hand, a number of commenters oppose any **further** relief for the C Block bidders from their PCS license auction debt.^{6/} The requested relief would discriminate against other CMRS licensees who have paid for their licenses,^{7/} would skew the competitive landscape of the CMRS marketplace by providing

^{2/} See, e.g., Comments of MCI Corporation ("MCI") at p. 3; Fortunet Communications, L.P. ("Fortunet") at p. 7; Nextwave Telecomm, Inc. ("Nextwave") at p. 10; General Wireless, Inc. ("GWI") at p. 7.

^{3/} See, e.g., Comments of Fortunet at p. 4; GWI at pp. 15-16; Urban Communicators ("Urban Comm") at pp. 1-2; Indus, Inc. ("Indus") at p. 3.

^{4/} Comments of Fortunet at p. 6.

^{5/} See, e.g., Comments of Fortunet at p. 6; Nextwave at p. 20; GWI at p. 17. Some of the loudest proponents of debt relief are, in reality, fronts for major multi-national corporations, or "MINCs", as discussed below.

^{6/} To date, the Commission has already suspended the C Block licensees' payments, and it has granted Nextwave relief on two different occasions: first, by granting Nextwave's licenses despite the fact that their ownership structure didn't comply with the rules; and second, by giving Nextwave additional time to restructure to come into compliance with the rules. See Comments of Bellsouth at p. 6.

^{7/} See, e.g., Comments of Sprint Spectrum at p. 2; Northcoast Communications, L.P. ("Northcoast") at p. 7; Spectrum Watch at p. 2.

regulatory advantages to some carriers, would protect certain competitors at the expense of fostering competition, would destroy the integrity of the Commission's auction process, and would result in indefensible legal harm to losing C Block bidders.^{8/} This would make it impossible for either future auction participants or the financial markets to have any confidence in the certainty, integrity and reliability of future Commission licensing proceedings employing competitive bidding.

One of the Commission's fundamental responsibilities is to promote competition, not protect competitors.^{9/} The current financial dilemma facing C Block licensees offers the Commission an unprecedented opportunity to demonstrate whether it truly believes in competition. Will the Commission embrace the marketplace and allow it -- rather than federal bureaucracies -- to determine winners and losers? Or will the Commission be intimidated by the possibility of bankruptcy -- a normal and sometimes unavoidable occurrence in the Nation's free market economy -- and interfere with the mechanics of the marketplace?

Although the Commission would have been justified in summarily denying the subject requests, it invited public comment and

^{8/} See, e.g., Comments of Bellsouth; Sprint Spectrum; Sprint Corporation ("Sprint Corp"); Omnipoint Corporation ("Omnipoint"); Comcast Corporation ("Comcast"); and Alltel Communications, Inc. ("Alltel").

^{9/} See In the Matter of Applications of Motorola, Inc. For Consent to Assign 800 MHz Licenses to Nextel Communications, Inc., 10 FCC Rcd 7783 (1995) at para. 20, citing Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 U.S. 585 (1985) ("[the Commission's] priority is to protect competition, not competitors, for the benefit of the public.")

developed an extensive record. Exposed to the clear light of public scrutiny, the greed and avarice of the debt relief proponents have been revealed. Their proposals have nothing to do with promoting small businesses; on the contrary, in many cases, they are the results of speculators manipulating the designated entity provisions to obtain cut-rate PCS licenses for foreign-owned multi-national corporations.^{10/}

Having turned the well-intentioned C Block designated entity set-asides into fronts for MINCs, these speculators now ask to be rescued from their own miscalculations. The beneficiaries of C Block debt relief would be large corporations such as Hyundai, Sony, and MCI/British Telecom (the proposed merger which was endorsed by the Justice Department just yesterday) and a few speculators. The losers would be the American taxpayer (foregone auction revenues of up to \$8 billion dollars), wireless companies that have played by the rules, and reduced competitiveness.

The petitioners have been prolific in conjuring up alternatives for reducing or deferring their freely-undertaken license payment obligations. The Commission could easily get bogged down in debating the perceived relative merits of these proposals, but such debate would be academic. As a number of

^{10/} A company that committed to amass \$4.9 billion dollars, with backing from major corporations including Sony, Korea Electric Power Company, and Pohang Steel, in order to win licenses in 95 Basic Trading Areas can in no way be categorized as a small business. See, e.g., Partial Response of Antigone Communications Limited Partnership and PCS Devco, Inc. to Nextwave's Section 308(b) Filing, submitted November 25, 1996, spelling out each of the foreign investors in Nextwave.

investment community representatives stated at the Commission's June 30, 1997 Forum on C and F Block relief, these licensees will not be able to attract investment unless their auction debt is reduced by as much as 75 percent -- to as low as \$10 per pop.^{11/} The indictment is clear: the failure of some C Block speculators to obtain financing is not due to temporary market anomalies, but to basic flaws in their business plans.

The Commission's choice, therefore, is really no choice at all: it can forgive nearly 75 percent of the C Block bids -- a radical and illegal action which would assure lengthy litigation -- and then wait to see if the C Block licensees can build out their networks; or it can accept the judgment of the capital markets as to the commercial prospects of these licensees, enforce its rules and reauction defaulted licenses.^{12/}

If the Commission is prepared to establish the "fair market value" of the C Block licenses at the levels postulated by the debt

^{11/} Statement of John Bensché, VP-Senior Wireless Services Analyst, Lehman Brothers, at the Commission's June 30, 1997 Public Forum in this proceeding. Mr. Bensché also pointed out the risk of devaluation this action could create for other PCS companies. If the Commission devalues the C Block companies, a likely marketplace reaction is the devaluation of all other wireless stocks. *Id.*

^{12/} Although this proceeding evaluates auction debt forgiveness for both C and F Block auction winners, the record developed herein does not really relate to F Block licensees. For example, one of the major premises of the relief proponents -- that C Block prices should be reduced to the per pop levels of A and B Block winners -- does not apply to F Block winners paying an average of only \$2.41/pop as compared to the \$37.97/pop C Block average. In reality, what this proceeding is about is the desperate attempts of a handful of C Block licensees to obtain federal subsidy of their irresponsible and unrealistic winning bids.

relief advocates (approximately 27 cents on the dollar of the winning bids), Nextel is more than willing to purchase the spectrum positions of any defaulting C Block licensees at more than their proposed twenty seven cents on the dollar; Nextel offers thirty cents on the dollar for their spectrum.^{13/} Accordingly, the Commission will find a ready market for any reaucted licenses.

II. COMMENTS

A. Comments Supporting Further Corporate Welfare For C Block Licensees

A number of C Block licensees filed comments supporting the initial relief proposals and, in many cases, proposing additional relief from the debt obligations which they willingly and knowingly accepted in hopes of realizing a significant return. The comments contain an incredible plethora of debt forgiveness and relief proposals, including:

- (1) extending the payment period to twenty years;^{14/}
- (2) suspending interest payments either temporarily or permanently;^{15/}

^{13/} See Remarks of Allen Salmasi, chief executive officer of Nextwave, in the June 26, 1997 *Wall Street Journal*, "Wireless Bidders Ask To Restructure Debt." In the article, Mr. Salmasi states that while their proposals of paying twenty-seven cents on the dollar "may sound like a bad deal," it is more than the Commission could expect in a reauction. This is pure speculation; Nextel's offer proves it false.

^{14/} Comments of Fortunet at p. 5; Nextwave at p. 8.

^{15/} Comments of Fortunet at p. 4; GWI at p. 16.

- (3) a significant (25 to 93 percent) reduction in a licensee's auction debt;16/
- (4) a discount for accelerated payment ("prepayment");17/
- (5) maintaining the existing payment term, but defer payments without accruing interest;18/
- (6) deferring payments without accruing interest for a portion of the payment term, and pay interest only or interest plus a small percentage of principal until maturity;19/
- (7) reducing the interest rate from 7 percent to 6.5 percent;20/
- (8) subordinating the government's right to collect the license debt to security interests of private investors; 21/ and
- (9) allowing licensees to return to the government some of their licenses rather than enforcing an all-or-nothing rule.22/

16/ See, e.g., Comments of Fortunet at p. 7; MCI at p. 3; R&S PCS, Inc. at p. 22. BIA Capital Corp. insists that the appropriate standard for measuring C Block values is the F Block licenses, which were auctioned for an average of \$2.41/pop -- compared to the \$37.97/pop value of the C Block licenses. This would result in a discount for C Block licensees of nearly 93%. Comments of BIA Capital Corp. at p. 3.

17/ See Comments of Nextwave at p. 10; Horizon at p. 10 proposing prepayment of their auction debt at the A and B Block per pop levels. GWI goes yet a step further, proposing to reduce its debt to the average per pop price of the A and B Block licenses and then further reduce those prices by 14% to add a "small business" prepayment discount in recognition of its "designated entity" status. Comments of GWI at p. 7.

18/ Comments of Urban Comm at pp. 1-2; Indus at p. 3.

19/ Comments of Urban Comm at pp. 1-2.

20/ Comments of Indus at p. 3.

21/ Comments of Southeast Telephone Limited Partnership, Ltd. at p. 8; Nextwave at p. 21.

22/ Comments of Horizon at p. 10.

Many of these comments advocate major changes to the Commission's designated entity attribution and investment rules, as well as relaxation of the Commission's buildout requirements.23/ These include:

- (1) eliminating the restriction on investment by "big" businesses;24/
- (2) simplifying the control group rules, i.e., permit more big business investment;25/
- (3) allowing a single investor to hold 49 percent of the company;26/ and
- (4) allowing more foreign investment -- up to 100 percent foreign ownership in a PCS C or F Block license;27/

The scope and breadth of these requests are astounding. Their unprecedented audacity is compounded by the proponents' failure to offer any commitment to bring service to the public more rapidly, no individual commitments to assure satisfaction of the reduced

23/ Comments of Brookings at p. 2.

24/ Comments of Dewey Ballantine at p. 3; Fortunet at p. 6; GWI at p. 17; Indus at p. 3. These proposals, offered by their advocates in all sincerity, are particularly destructive to competition and auction integrity since the very existence of these designated entity limitations is what distinguishes the C Block licensees from the A and B licensees. If Nextwave, for example, entered into the auction prepared to bid and raise \$4.9 billion, it could have easily participated in the A and B Block auction -- free to tap into nearly any resource (subject to foreign ownership limits). If these provisions are eliminated, the Commission would be permitting non-designated entities to take advantage of payment plans and bidding credits that would give them a competitive advantage over competing licensees.

25/ Comments of Nextwave at p. 20; GWI at p. 17.

26/ Comments of GWI at p. 17.

27/ Comments of Nextwave at p. 6; Indus at p. 3.

debt obligations, and no commitments to maintain small business participation.^{28/}

B. Comments Advocating Equitable Treatment of All CMRS Licensees

A broad-based group of commenters oppose auction debt relief for C Block licensees.^{29/} These commenters prove false the C Block licensees' assertions that "unique obstacles" have prevented them from successfully obtaining financing for their business plans and auction license debt. Because they must compete with C Block licensees, these commenters seek to ensure that all carriers are subject to fair and equitable rules and regulations, i.e., the Commission must provide nondiscriminatory treatment and regulatory parity for competing CMRS carriers. If the Commission grants significant debt relief to one set of licensees, it would create regulatory chaos and unfair competitive advantages for those licensees vis a vis those left to fulfill their government obligations.

For example, Conxus Communications, Inc. ("Conxus"), a nationwide narrowband PCS licensee, asserts that it will

^{28/} In fact, some -- including Fortunet -- would eliminate any remaining pretense of encouraging long-term small business participation in commercial wireless communications by permitting the transfer of C Block licenses to non-designated entities.

^{29/} These include CMRS licensees, a Regional Bell Operating Company, C Block bidders who withdrew from the auction, and PCS licensees who have paid their auction obligations. See, e.g., Comments of BellSouth; Sprint Spectrum; Sprint Corp.; Cook Inlet Communications, Inc. ("Cook Inlet"); Pioneer Telephone Association; Alltel Communications ("Alltel"); Comcast Corporation ("Comcast"); Northcoast Communications, LLC; and Spectrum Watch. See also the remarks of Shelly Spencer, General Counsel of Airgate Communications ("Airgate"), at the June 30, 1997 Public Forum.

potentially compete with broadband PCS services if "the Commission does not inadvertently skew the capital marketplace by providing more favorable regulatory treatment to the C and F Block broadband PCS licensees."^{30/} Similarly, Creative Airtime Solutions, Inc. ("Creative") argues that auction debt relief for C and F Block licensees must be extended to 900 MHz Specialized Mobile Radio ("SMR") licensees. Creative asserts that if the Commission finds that C Block licensees have experienced unique obstacles warranting debt relief, then 900 MHz SMR licensees, recently saddled with the burdensome obligations of CMRS classification and a nearly decade-long delay in licensing outside limited areas, must received equal treatment to reduce their licensing debt.^{31/} Spectrum Watch, a public interest group that protects taxpayers' interests with regard to spectrum auctions, opposes auction debt relief due to the unfairness to other licensees who followed the rules and are required to make timely payments.^{32/}

Commenters oppose the relief plans based on:

- (1) the Commission's previous decisions denying waivers of its debt repayment rules for other licenses granted by competitive bidding, e.g., the Interactive Video Data Service ("IVDS") requests;^{33/}

^{30/} Comments of Conxus at p. 3. Conxus asserts that any C and F Block debt relief must be matched by similar relief for narrowband PCS licensees.

^{31/} Comments of Creative at pp. 5-6. See also Comments of National Telephone Cooperative Association at p. 3 (addressing the discriminatory impact on those C and F Block licensees who have fulfilled their obligations).

^{32/} Comments of Spectrum Watch at p. 2.

^{33/} Comments of Bellsouth at p. 5; Sprint Spectrum at pp. 5-6.

- (2) the adverse impact on the integrity of the Commission's rules;34/
- (3) the irresponsible bidding of C Block licensees who were aware of the rules, the marketplace realities and the potential debt obligations;35/ and
- (4) federal laws restricting the Commission's ability to relieve or forgive the obligations of private entities to pay debts owed to the U.S. government.36/

III. DISCUSSION

A. The Commission's Responsibility Is To Protect Competition, Not Competitors

The PCS licensees seeking relief in this proceeding are asking the Commission to rescue them from their own ill-advised actions as well as the uncertainties of a competitive marketplace. Discovering they are unable to pay and play by the rules, the licensees want to change them. Using the skillful wordsmithing of expensive, high-profile Washington D.C. law firms, these "small businesses" -- some of which incurred billions of dollars in debt - - are painting a picture that, in a vacuum, may appear persuasive.37/

34/ Comments of Sprint Spectrum at p. 3; Cook Inlet at p. 3; Pioneer Telephone at p. 2. Sprint Spectrum, for example, notes that it chose not to participate in the C Block auction based on the Commission's designated entity rules. Sprint's decision may have been misplaced, given the Commission's apparent willingness to change its rules after completing the auction.

35/ Comments of Sprint Spectrum at pp. 5-6; Cook Inlet at p. 9 and 14; and Alltel at p. 3.

36/ Comments of Bellsouth at p. 11. See 31 U.S.C. Section 3711.

37/ It is patently obvious that a company with the resources, backing and/or presumed capability to raise five billion dollars is no "small business." Neither is MCI.

However, the Commission must consider their proposals in the context of its overall spectrum management responsibilities for the CMRS marketplace. C Block licensees are not the only telecommunications companies competing in an increasingly competitive marketplace for wireless customers; they are not the only companies facing tight capital markets; and they are not the only licensees facing depressed stock values. Yet, they are the only CMRS licensees asking the Commission not to leave them "hanging out to dry" in the real world's competitive marketplace.^{38/}

Many companies have experienced difficult financial times and many more will face them in the future. This is the nature of competition, and companies who choose to participate must be prepared for the risks as well as the rewards. Nextel, for example, faced a difficult economic and competitive position just two years ago. After a substantial potential merger faltered, Nextel experienced a significant drop in its stock price, technological problems with its service, and delays in system buildout. Nextel was forced to suspend construction in some markets to adjust to the financial downturn within the company and its ability to attract investment. All of this, moreover, was occurring in the shadow of the Commission's licensing of the A and B block PCS systems.

^{38/} Remarks of Karen Johnson, President of Fortunet, at June 30, 1997 Public Forum.

Nextel's response to the downturn was to redouble its efforts to pursue new financing, adjust its business plan, and make the necessary technical and operational changes. Although Nextel would have been very interested in having the government assume 75 percent of its debt, eliminate its interest payments, and provide 15 years to pay the remaining principle, Nextel -- as a provider in a competitive marketplace -- had no such opportunity.

The naked truth is that the financial challenges facing C Block licensees are not unique and do not warrant discriminatory auction debt relief.^{39/} Despite the claims of MCI and others of withered capital availability, Nextel has raised \$3.5 billion dollars since September 1996 (post-C Block auctions) -- \$1.5 billion of it in the past three months. Capital availability for wireless ventures has not withered nor changed dramatically. A company with a sound business plan and credible management can raise money in the current market.

Many industry participants and investment analysts assert that the C Block licensees bid irresponsibly, ignoring the underlying premises of their business plans and clear economic signals.^{40/}

^{39/} See also opening remarks of Stephen Hillard, CEO of Cook Inlet, at the June 30, 1997 Public Forum, discussing the financial troubles that have faced his company in the past.

^{40/} See, e.g., Comments of Cook Inlet at p. 14; Omnipoint at p. 2; Alltel at p. 3. See also remarks of Mark Lowenstein, VP-Wireless/Mobile Communications for the Yankee Group, at the June 30, 1997 Public Forum, stating that there was irresponsible speculative bidding in the C Block auction; and the remarks of Brian O'Reilly, Managing Director - Communications Finance at Toronto Dominion, noting that he advised numerous clients to withdraw from the C Block auction because the bidding had become too expensive.

The C Block licensees had an advantage over previous auction participants in that they already knew the market value of the A and B Block licenses when they entered into the C Block auction. That they decided a C Block license for half the pops was worth two times as much as the A and B licenses is not the responsibility of the Commission or Congress. The responsibility is solely theirs. Any Commission action shifting that responsibility will engender lawsuits and cause lengthy delays in the rollout of PCS competition.^{41/} Although some of the potential defaulting C Block licensees are likewise threatening legal action if their proposals are denied, it is self-evident that a Commission decision to enforce its rules is significantly more defensible than a Commission decision to apply them arbitrarily to only those licensees who choose to follow them.

The proposals for debt extension, interest waivers and the like, are bad enough, but the proposals of MCI, Nextwave and others to simply reduce the auction debt of the C Block licenses to the per pop prices paid for A and B Block licenses are beyond belief.^{42/} If the Commission is to determine the "market value" of the C Block licenses, why would that same rationale not support Commission-established pricing for all PCS licensees to the same levels?

^{41/} See, e.g., Comments of Sprint Spectrum at p. 2; Omnipoint at p. 6; Northcoast at p. 7.

^{42/} See, e.g., Comments of MCI at p. 3; Fortunet at p. 7.

That C Block licensees are promoting this license devaluation is, first and foremost, an admission that they overbid. This overbidding, however, was not caused by any Commission policy or Congressional mandate. On the contrary, the "unanticipated higher prices" for C Block licenses were caused by the bidders themselves. They were well aware then -- as now -- that the C Block licensees would not be the first to market. They also were aware of what had been paid for the A and B Block licenses. If they believed that was a standard by which to measure C Block values, then they should have applied it to their bidding strategies when they had the opportunity.

1. The Proposed Relief Would Undermine the Integrity of Competitive Bidding As A Licensing Mechanism

Pursuant to the Communications Act, the Commission's auction mandate includes (1) promoting rapid delivery of services; (2) promoting competition; and (3) providing opportunities for small business participation. The Commission undoubtedly is considering the impact of its decisions on the federal budget deficit. These laudable goals will be undercut if the Commission fails to ensure the reliability and integrity of spectrum licensing through competitive bidding. If the Commission caves in to the C Block demands, future bidders will not take the rules seriously, and will exercise no discipline in their bidding strategies.^{43/} Bidders would, as Airgate's Shelly Spencer described it, "play chicken with the Commission," betting that it would not take away their

^{43/} Comments of Omnipoint at p. 8; see also Comments of Comcast at p. 5.

licenses.^{44/} Investors will have no certainty upon which to base investment decisions.

Integrity breeds confidence, and confidence enables reliance. To rely on the Commission's rules, potential investors must have confidence that those rules -- once established -- will be enforced. Lacking this certainty, investors will not make investment commitments, and providers, in turn, will be unable to rapidly deploy new services to the public.

Commission "threats" or "warnings" of strict enforcement would fall on deaf ears, given the numerous warnings the Commission has already given C Block licensees that it would not rectify their poor bidding decisions. Moreover, C Block debt relief would be legally inconsistent with Commission decisions denying the debt relief waiver requests of IVDS licensees.^{45/} For example, the Commission stated there that bidders assume the risk that their bids may be too high, and they "should not be able to shift responsibility for their actions onto the government."^{46/} In fact, only one month ago, the full Commission rejected the request of a C Block auction winner for an extended payment deadline, stating:

"[I]f we were to extend the deadline for NatTel here, we would be encouraging future

^{44/} Remarks of Shelly Spencer at the June 30, 1997 Public Forum.

^{45/} See, e.g. Requests for Waivers in the First Auction of 594 Interactive Video and Data Services Licenses, 9 FCC Rcd 6384 (1995).

^{46/} *Id.*

bidders to submit last minute waiver requests in lieu of making their payments at the time their obligations become due, thereby impairing the integrity and functioning of the auction process. [] . . . the integrity of the auction process is dependent on winning bidders timely satisfying their payment obligations."47/

Potential bidders, auction participants, industry investors, and competitors have relied on the Commission's rules in making decisions about seeking PCS licenses. For example, Sprint Spectrum decided not to participate in the C Block auction based on the designated entity rules.48/ Go Communications withdrew from the auction prior to its conclusion based on the existing rules and the exorbitant bidding thereunder.49/ Bidders who were ultimately the second, third or fourth-highest bidders in a market presumably stopped bidding because they were unwilling or unable to pay the increasingly expensive prices.50/

Had these parties known that the Commission would extend the payment terms to twice the license term, eliminate the interest requirement, *reduce the payment obligations by 70 percent*, dictate that the A and B Block values are the "fair market value" of C

47/ National Telecom PCS, Inc., FCC 97-192 at para. 14 (June 19, 1997).

48/ Comments of Sprint Spectrum at p. 3.

49/ See, e.g., Comments of Pioneer Telephone at p. 2.

50/ See Comments of Omnipoint at p. 6. Omnipoint notes that in many markets the second highest bids were only a small percentage lower than the winning bid. If the Commission were to reduce the C Block values to the A and B Block prices, they would in many cases be lower than the last bids of the second-place bidders. Those second place bidders would be well-positioned to sue the Commission.

Block licenses, subordinate the government's debt to private financiers, or eliminate the large business and foreign investment limitations, these bidders would have had significantly different options and potentially would have made different decisions. Under the current proposals, in fact, it would have made no difference how much they bid; theoretically, bidders could have continued to bid *ad infinitum*.^{51/} Thus, as Sprint Corporation notes, hundreds of companies have spent billions of dollars in reliance on the Commission's rules.^{52/} The Commission has no legal or public interest basis for changing them now.

2. Discriminatory Impact

In addition to destroying the industry's confidence in the integrity of the Commission's auction rules, a Commission decision to grant C Block relief would inject regulatory imbalance into the marketplace, skew the economic forces shaping competition in the industry, offer a blatant competitive advantage to the C Block licensees, and interfere with the robust CMRS competition the Commission has attempted to create during Chairman Hundt's tenure. Unabashedly promoting the interests of one group of licensees *vis a vis* their competitors discriminates against those carriers who have made timely payments to date, and who will continue to be held

^{51/} Nextel can only imagine the additional bids that it and other bidders would have submitted in the 900 MHz SMR auction had they known the Commission would excuse a substantial portion of the required payments. Is not Nextel -- in fact aren't all auction winners -- entitled to the same relief from their auction debt obligations as the C Block licensees?

^{52/} Comments of Sprint Corp. at p. 2.

to a higher standard. Moreover, it would violate Congress' CMRS regulatory parity mandate.^{53/}

The Communications Act requires special assistance for small businesses in order to promote their participation in spectrum licensing auctions and in the provision of spectrum-based services.^{54/} Congress included this provision to address the historical concern that small businesses would not be able to compete with larger companies in spectrum auctions. The Commission fulfilled this Congressional mandate by providing "justified discrimination" through limited participation set-asides, bidding credits and low interest installment payment plans. The fact that some of these "small business" bidders abused this "public assistance" by bidding enormous amounts of money -- in one case, 4.9 billion dollars -- does not require additional government assistance. Congress did not include the designated entity provisions as a loophole for Sony, British Telecom and other MINCs to gain cut-rate entry into the PCS market. Nor did Congress mandate continued market interference until "small businesses" succeeded -- particularly when to do so would create an unfair competitive disadvantage for those licensees who have fulfilled their license obligations.

^{53/} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, Section 6002, 107 Stat. 312 (1993) at Section 6002(d)(3).

^{54/} 47 U.S.C. Section 309(j).

3. The Parties Seeking Relief Offer No Commitment To Build Systems and Rapidly Deploy Services

The commenters supporting auction debt restructuring assert that this is the best way to assure the rapid availability of new CMRS services and, therefore, beneficial competition. Implicit in their argument is that they will -- without the burden of the debt they voluntarily assumed -- have the capability to attract sources of capital, invest it in system buildout, and successfully construct and operate new PCS systems. This, however, is pure speculation. The Commission has no basis -- and the commenters provide no supporting evidence or commitment -- for assuming that alleviating their auction debt will enable C Block licensees to get their systems up and running faster and more successfully than alternative bidders in a reauction.

As Wall Street analysts pointed out at the June 30, 1997 Public Forum, auction debt is not the only obstacle to attracting investment. Each C Block licensee seeking relief must still evidence a quality management team, reliable vendors, vendor commitment, product differentiation, and an attractive business plan. Mr. O'Reilly of Toronto Dominion concluded, in fact, that the Commission is only part of the solution; the individual companies would still have to prove their value. Without any evidence of an improved business plan, the Commission has no basis for concluding that the proposed debt relief will more rapidly deliver services to the public.